

September 5, 2003

Honorable Commissioners and Members
of the Cosumnes Project AFC Committee
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

01-AFC-19

CALIF ENERGY COMMISSION

**RE: SMUD Cosumnes Power Plant Project
Specifically the Intended Gas Pipeline Extension Route
Docket No. 01-AFC-19**

SEP 05 2003

RECEIVED IN DOCKETS

Dear Honorable Commissioners and Members:

The purpose of this letter is to formally object to the SMUD Cosumnes Power Plant gas pipeline extension route through two sides of a 100-acre agricultural property, zoned Ag-80, on Eschinger Road, APN: 132-0151-010, Sacramento County, owned by Tim Morse, Kevin Morse, and Kirsti Fong.

We submit the following criteria as the basis for our objection:

Historical and Cultural Aspect - The property is currently a successfully producing farm and has been owned and operated in our family since approximately 1920.

Pipeline Route Exception - The Wackman property adjacent to our property has been granted an exception. The pipeline has been rerouted using the existing right-of-way through Eschinger Road rather than traveling through their grape producing agricultural property. We request the same treatment.

Prime Farmland - Our 100-acre agricultural property is prime farmland based on the California Department of Conservation's criteria.

Williamson Act - The property has been placed under the provisions of the Williamson Act to preserve its agricultural integrity since approximately 1972.

Functionality of Farm - Commodity prices in California require viable crops. Freedom of crop choices is imperative to continued successful farming. Viable choices include deep-rooted crops, which are not permitted on or near the pipeline. We would be denied the ability to farm this land freely under the current pipeline route.

Loss of Income - Since the current lease holder would be restricted in crop choices, access to the property, and farming equipment allowed on access driveways, we have been notified of his intention to vacate and break the lease if the pipeline is approved. Our estimated loss of leasehold income per year is approximately \$9,200 with an additional cost of approximately \$5,000-\$10,000 per year to maintain the well and pump.

Water Well and Pump Relocation - This pipeline may require the abandonment of our well and pump facilities. A cost of over \$100,000 would be associated with back filling the existing well, drilling a new well, relocating the pump, installing new electrical switches, obtaining new permits, etc. These upfront costs do not guarantee us a producing water well.

The Honorable Commissioners and Members of the Cosumnes Project AFC Committee
California Energy Commission
Page Two

It is our belief that our property rights will be seriously compromised through SMUD's attempt to take ownership of a portion of our property, curtail its productivity, and jeopardize any future potential of the remaining property. Right-of-ways along existing roads are intended for this type of project, not agricultural property. The impact to the production of our farmland, the costs associated with repairs and replacements, and restrictions on the remaining property, acts as an unfair and unjustified constraint placed upon us. It is our opinion that SMUD is taking gross advantage of the land owners and diminishing the property's usefulness and value. There is no reason why we should suffer any greater than other SMUD rate-payers. The right-of-way route is the most cost-effective and non-invasive choice for both SMUD and the property owners. Alternatively, the 26-mile pipeline (estimated at 20 million dollars) could be eliminated by using Carson Ice as the power plant site.

Research has shown regarding involuntary easements that "...modern courts have generally held that it is only the elimination of *all* (or nearly all) beneficial use of property that is a taking."¹ Based on the factual evidence we have presented, we urge the California Energy Commission to support our request to preserve farmland and assist us in negotiating the use of the existing right-of-way for this pipeline project if it should go forward.

Finally, we request that this project be postponed based upon insufficient public outreach. The SMUD rate-payers of Sacramento County have not been advised of the SMUD Cosumnes Power Plant Project and the intended gas pipeline extension route and potential negative impact upon landowners.

Sincerely,



Kirsti Fong for
Tim Morse, Kevin Morse, Kirsti Fong, owners
Property on Eschinger Road, Elk Grove, CA 95758

cc: Don Nottoli, Supervisor, Fifth District, County of Sacramento

¹ Frank, Richard M., Meltz, Robert, Merriam, Dwight H.; *The Takings Issue, Constitutional Limits on Land-Use Control and Environmental Regulation*; Island Press, Washington, D.C.; (1999); pg. 132.